

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5349 of 1998

to

FIRST APPEALNo 5413 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 6 : No

SPECIAL LAND ACQUISITION OFFICER

Versus

JAYANTIBHAI NARANBHAI PATEL

Appearance:

Mr. M.R. Raval, AGP, in F.A. Nos. 5349 to 5380 of 1998, for the State

Mr.H.L. Jani, AGP, in F.A. Nos. 5381 to 5313 of 1998, for the State.

Mr.G.M. Amin for the respondents.

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of Order: 27/01/99

COMMON JUDGMENT : (Per: Panchal. J.)

1. All these above-numbered First Appeals are ordered to be admitted. Mr. G.M. Amin, learned counsel, waives service of notice in each appeal on behalf of the original claimants. At the joint request of the learned counsel appearing for the parties, the appeals are taken up for final hearing today.

2. By means of filing these appeals under Section 54 of the Land Acquisition Act, 1894, read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged legality of the common judgment and award dated October 7, 1997, rendered by the learned Extra Assistant Judge, Kheda at Nadiad, in Land Acquisition Reference No. 1057 of 1991 to Land Acquisition Reference No. 1074 of 1991; Land Acquisition Reference No. 1076 of 1991 to Land Acquisition Reference No. 1097 of 1991; Land Acquisition Reference No. 1 of 1992 to Land Acquisition Reference No. 7 of 1992; Land Acquisition Reference No. 406 of 1992 to Land Acquisition Reference No. 411 of 1992; and Land Acquisition Reference No. 413 of 1992 to Land Acquisition Reference No. 425 of 1992. All the abovereferred to reference applications were consolidated with Land Acquisition Reference No. 406 of 1992 and common evidence was led by the claimants. Under the circumstance, we propose to dispose of these appeals by this common judgment.

3. A proposal to acquire agricultural lands of village Samarkha, Taluka Anand, District Kheda, was received from the Executive Engineer, R & B., Ahmedabad, for the purpose of laying down express highway between Ahmedabad and Baroda. On scrutiny of the said proposal, the State Government was satisfied that the agricultural lands of village Samarkha were likely to be needed for the said public purpose. Accordingly, notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued, which was published in the Government Gazette on August 8, 1988. The lands, which were likely to be needed for the public purpose, were specified in separate appendix appended to the said notification. The land owners were served with notices under Section 4 of the Act. They had filed their objections against the proposed acquisition. After considering their objection, the Special Land Acquisition Officer, Kheda, had forwarded his report under Section 5A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that the lands which were specified in notification issued under Section 4(1) of the Act, were needed for public purpose of laying

down express highway between Ahmedabad and Baroda. Therefore, declaration under Section 6 of the Act was made which was published in official gazette on May 23, 1989. Interested persons were, thereafter, served with notices under Section 9 of the Act for determination of compensation. The Special Land Acquisition Officer after considering the materials placed before him offered compensation to the claimants at the rate of Rs.3.50 per sq.mtr. by his award dated July 30, 1990. According to the claimants, the offer of compensation was inadequate and, therefore, they did not accept the award. The claimants submitted applications in writing requiring the Special Land Acquisition Officer, Kheda, to refer the matter to the Court for the purpose of determination of compensation. Accordingly, reference were made to the District court, Kheda, at Nadiad, which were numbered as mentioned in the earlier part of this judgment. In the reference applications, the claimants pleaded that the lands acquired were fertile lands and having regard to the quality of the lands acquired as well as income derived from the agricultural produces, they were entitled to compensation in all at the rate of Rs.53.50 per sq.mtr. It was averred in the applications that the Special Land Acquisition Officer had not taken into consideration relevant factors while ascertaining the market value of the acquired lands, and, therefore, they were entitled to higher compensation.

4. The reference applications were contested by the present appellants vide written statement Exh.6. In the reply, it was stated that, in view of the fertility of the lands acquired as well as income realized from the sale of agricultural produce, the Special Land Acquisition Officer was justified in offering compensation at the rate of Rs.3.50 ps per sq.mtr and, therefore, the reference applications should be dismissed. The claimants adduced oral as well as documentary evidence to substantiate their claim for compensation at the rate of Rs.53.50 per sq.mtr. Witness Kanubhai Nathabhai Patel, who was claimant in Land Acquisition Reference Case No.407 of 1992, was examined at Exh.12. In his evidence, the said witness gave information regarding fertility of the lands acquired as well as income, which was being derived by the claimants from the sale of agricultural produces. He also produced previous award of the Reference Court rendered in Compensation Case No.1 of 1992 and other allied matter, wherein, lands of village Samarkha, which were acquired for this very purpose, were valued at Rs.15 per sq.mtr, as on August 29, 1986, which was the date of publication of notification under Section 4(1) of the Act. No oral

or documentary evidence was led by the present appellants. On consideration of the evidence adduced by the claimants, the Reference Court held that previous award was comparable and relevant for the purpose of ascertaining the market value of the lands acquired in this case. Contention raised by the present appellants that earlier award was not relevant for the purpose of ascertaining the market value of the lands acquired subsequently, was rejected. On ultimate analysis, the Reference Court has held that the claimants are entitled to compensation at the rate of Rs.15/- per sq.mtr by the impugned common award, which has given rise to the present appeals.

5. The learned Assistant Government Pleader appearing for the appellants submitted that, in view of the fertility of the lands acquired, as well as income derived by the claimants from the agricultural produce, compensation at the rate of Rs.15/- per sq.mtr should not have been awarded by the Reference Court. It was claimed that though the lands acquired were situated in a village which is nearer to a developed city, but, in the village itself, as such there was no development and, therefore, the claimants were not entitled to higher compensation, as claimed in the reference applications. The learned counsel for the appellants stressed that no cogent and reliable evidence was led by the claimants to show that they were entitled to compensation at the rate of Rs.15/-per sq.mtr. and, therefore, the appeals should be allowed.

6. Mr. G.M. Amin, learned counsel for the claimants, submitted that earlier award, which was relied upon by the claimants, related to the lands of this very village wherein market value of the lands was assessed at Rs.15/per sq.mtr as on August 29, 1986 which was the date of publication of notification under Section 4(1) of the Act and, therefore, the Reference Court while relying upon said award should have awarded higher compensation because notification in the present case under Section 4(1) of the Act was published on August 8, 1988, i.e., after a period of about two years. The learned counsel for the claimants emphasized that previous award of the Reference Court was confirmed by the High Court in First Appeals Nos. 1906 of 1992 and other allied matters and, as the previous award had become final between the parties, it cannot be said that any error was committed by the Reference Court in placing reliance on the said award for the purpose of determining the market value of the lands acquired in the present case so as to warrant interference of this Court in the present appeals. What

was highlighted by the learned counsel for the respondents was that the Reference Court was not justified in directing that 5% government share should be deducted from the awarded amount in the case of new tenure lands and, therefore, the said direction should be set aside.

7. We have taken into consideration oral evidence of witness Kanubhai Nathabhai Patel as well as documentary evidence produced by the learned advocates for the parties for our perusal.

8. On behalf of the claimants, witness Kanubhai Nathabhai Patel, who was claimant in Land Acquisition Reference Case No.407 of 1992, was examined at Exh.12. In his evidence, the witness gave particulars about fertility of the lands acquired and irrigation facility which was available to the acquired lands. According to the said witness, the claimants were taking two/three crops in a year and were earning substantial amount by sale of agricultural produces. He stated that, in the village, there was a primary school, panchayat house, milk society, government hospital, light and telephone facilities, S.T. bus facilities, etc. and Anand city was at a distance of about 6 k.m. from the acquired lands. The witness also produced previous award of Reference Court rendered in Compensation Case No.1 of 1990 and other allied matters at Exh.13. A bare perusal at Exh.13 makes it clear that the lands of this very village, i.e., village Samarkha, were also acquired for Ahmedabad-Vadodara express highway and, therein, notification under Section 4(1) of the Act was published in the official gazette on August 29, 1986. The Reference Court, in that case, having regard to the evidence led by the claimants, determined the market value of the lands at the rate of Rs.15/- per sq.mtr. The award of the Reference Court was challenged by the Special Land Acquisition Officer,Kheda, and another, in First Appeal No.1906 of 1992 with First Appeals Nos. 1907 of 1992 to 1950 of 1992, wherein, cross objections were also filed by the claimants. The judgment reported in 1993 (2) GLR p.1289, would show that the previous award of the Reference court was upheld by the High Court. Certified copy of the judgment of the High Court rendered in the abovereferred to First Appeals is produced on the record of the case at Exh.14. On behalf of the appellants, it is not brought to the notice of the court that the judgment of the High Court was either set aside or modified in any manner by the higher forum. Under the circumstances, there is no manner of doubt that the claimants had relied upon the previous award of the

Reference Court which had become final between the parties. It is well settled that previous award of the Reference Court in respect of similar lands of same village and which has become final can be considered as a relevant piece of evidence for the purpose of ascertaining the market value of the lands acquired subsequently. If there is gap of time between the notifications issued under Section 4(1) of the Act, then reasonable rise in price of the land can also be considered while ascertaining the market value of the lands acquired subsequently. It is relevant to notice that, in the earlier case, notification under Section 4 of the Act was published in the official gazette on August 29, 1986 whereas in the present case notification under Section 4(1) of the Act was published on August 8, 1988, and, though there is gap of time of nearly two years, the Reference court did not think it proper to grant rise in price of value of the lands to the claimants. Though the appellants were given sufficient opportunity to lead evidence in the case, it was never brought to the notice of the Reference court by the appellants that the lands which were acquired in the present case did not possess similar advantages which were noticed in the case of the lands which were acquired earlier or that the lands acquired in the present case were inferior in quality in any manner to the lands acquired earlier. Probably, the only contention, which was raised on behalf of the appellants, was that the lands acquired were at distance of 10 to 12 kms. away from Anand city and, therefore, the claimants were not entitled to higher compensation. Though the witness, who was examined on behalf of the claimants, had stated that the lands acquired were at a distance of 6 kms. from Anand city, no previous award with reference to the lands of Anand city was relied upon by the claimants. The evidence of witness examined on behalf of the claimants shows that fertility of the lands acquired in this case is same as that of the lands acquired earlier. The evidence of said witness indicates that acquired lands are not only fertile but yield good income. We may state that other lands of village Samarkha were also acquired for this very purpose pursuant to notification which was issued under Section 4(1) of the Act and which was published in official gazette on September 5, 1988 in another case. Therein, the Reference Court had awarded compensation to the claimants at the rate of Rs.1740/- per Are and First Appeal No.4957 of 1998 to First Appeal No.4985 of 1998, which were directed against the common judgment and award dated December 29, 1997, rendered by the learned Extra Assistant Judge, Kheda at Anand, in Land Reference Case Nos. 471 of 1991 to 599 of 1991,

have been dismissed by the Division Bench vide order dated January 22, 1999. On over all view of the matter, it cannot be said that excessive compensation is awarded to the claimants warranting interference of the Court in the present appeals. No ground is made out by the appellants for setting aside the common award and the appeals will have to be dismissed.

9. So far as direction given by the Reference Court to deduct 5% government share from the awarded amount in case of new tenure lands is concerned, we notice that the Supreme Court, in the case of State of Maharashtra vs. Babu Govind Gavate, reported in AIR 1996 Supreme court 904, has held that deduction from the market value under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948, is not permissible. It has been held that sanction required under Section 43 of the said Act is only when there is a bilateral valid agreement between the owner and a third party purchaser or a lessee or a mortgagee, etc. as envisaged under Section 43(1) but, when the State exercises its power of eminent domain and compulsorily acquires the land, question of sanction under Section 43 does not arise, and deduction of 1/3rd of market value under Section 43 is not permissible. In view of the mandate given by the Supreme Court, we are of the opinion that the Reference Court was not justified in directing that 5% government share should be deducted from the awarded amount in case of new tenure lands and, therefore, the said direction will have to be set aside. We may state that, though the claimants have not filed cross appeals or cross objections, relief can be given to the claimants-respondents in view of the provisions of Order 41 Rule 33 of the Code of Civil Procedure, 1908.

10. For the foregoing reasons, all the appeals filed by the appellants fail and are dismissed with no order as to costs. Direction given by the Reference Court that 5% government share should be deducted from the awarded amount in case of new tenure land, is hereby set aside. The office is directed to draw decree in terms of this judgment.

(swamy)